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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 EDWARD B., JR.,

14 Plaintiff,

15 v.

16 COMMISSIONER OF SOCIAL
17 SECURITY,

18 Defendant.

Case No. C20-5848 RAJ

**ORDER REVERSING DENIAL
OF BENEFITS**

19 Plaintiff appeals denial of his application for Disability Insurance Benefits.

20 Plaintiff contends the ALJ erred by discounting his testimony and by rejecting a treating
21 doctor's and an examining doctor's medical opinions in favor of two non-examining
22 doctors' opinions. Dkt. 19. As discussed below, the Court **REVERSES** the
23 Commissioner's final decision and **REMANDS** the matter for further administrative

1 proceedings under sentence four of 42 U.S.C. § 405(g).

2 **BACKGROUND**

3 Plaintiff is 56 years old, has a high school education, and has worked as a medical
4 assistant, housing project manager, and loan officer. Dkt. 17, Admin. Transcript (Tr.) 24.
5 Plaintiff applied for benefits in January 2018, alleging disability as of December 31,
6 2017. Tr. 15. After conducting a hearing in April 2019, the ALJ issued a decision
7 finding Plaintiff not disabled. Tr. 31-52, 15-26. In pertinent part, the ALJ found that,
8 with the severe impairments of depression, post-traumatic stress disorder (PTSD), and
9 alcohol dependence in remission, Plaintiff had the residual functional capacity (RFC) to
10 perform simple, routine work with minimal public interaction. Tr. 17, 19.

12 **DISCUSSION**

13 This Court may set aside the Commissioner's denial of Social Security benefits
14 only if the ALJ's decision is based on legal error or not supported by substantial evidence
15 in the record as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

16 **A. Plaintiff's Testimony**

17 Where, as here, an ALJ determines a claimant has presented objective medical
18 evidence establishing underlying impairments that could cause the symptoms alleged,
19 and there is no affirmative evidence of malingering, the ALJ can only discount the
20 claimant's testimony as to symptom severity by providing "specific, clear, and
21 convincing" reasons supported by substantial evidence. *Trevizo*, 871 F.3d at 678.

22 The ALJ discounted Plaintiff's testimony of disabling mental symptoms because
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1 he received minimal treatment and mental status examination results were largely normal.
2 Tr. 20, 22.

3 **1. Treatment**

4 The ALJ found, during the relevant period, the record showed “mostly 25 minute
5 medication counseling appointments and no formal psychotherapy.” Tr. 20.¹ While the
6 cited treatment note states this was “not a formal psychotherapy visit,” the notes
7 document Plaintiff’s symptoms extensively, along with a full mental status examination
8 and assessment scales for depression, anxiety, and PTSD. Tr. 397-98.

9 Plaintiff contends his own and his doctors’ statements show his symptoms
10 prevented him from engaging in more extensive mental health treatment. Dkt. 19 at 5;
11 Dkt. 21 at 3. In an October 2018 assessment, Dr. Lodin wrote Plaintiff was “not able to
12 leave his house and avoids any social interaction.” Tr. 417. Plaintiff was offered therapy
13 “but he declined. He is not able to leave his house to attend therapy once a week.” *Id.*
14 Plaintiff testified his doctor wanted him to attend weekly group therapy, but he “do[es]n’t
15 do well in front of people, and ... it wouldn’t work.” Tr. 40-41.

17 An “unexplained or inadequately explained failure” to seek treatment or follow
18 prescribed treatment can be a valid reason to discount a claimant’s testimony, but an ALJ
19 must address the claimant’s “proffered reasons.” *Trevizo*, 871 F.3d at 679-80 (quoting
20 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). The ALJ did not address the medical
21 evidence showing Plaintiff was unable to engage in more extensive therapy, and thus
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23 ¹ The Commissioner also argues Plaintiff “only attended five counseling sessions between 2014 and 2016,” but that was well before the alleged onset date. Dkt. 20 at 7.

1 erred by discounting his testimony based on failure to follow prescribed treatment
2 without considering Plaintiff's reasons.

3 The ALJ cited treatment records showing Plaintiff was "reluctant to make any
4 changes" to his medication. Tr. 413. Plaintiff reported he once tried to stop Zoloft "but
5 he became very irritable and angry. His wife encouraged him to restart it." Tr. 422. The
6 ALJ did not explain how Plaintiff's reluctance to change medications due to past negative
7 experience undermined his testimony.

8 The Court concludes the ALJ erred by discounting Plaintiff's testimony based on
9 minimal treatment.
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11 **2. Mental Status Examinations**

12 An ALJ may reject a claimant's symptom testimony when it is contradicted by the
13 medical evidence, but not when it merely lacks support in the medical evidence. *See*
14 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008)
15 ("Contradiction with the medical record is a sufficient basis for rejecting a claimant's
16 subjective testimony."); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) ("lack of
17 medical evidence cannot form the sole basis for discounting pain testimony").

18 The ALJ summarized several treatment notes, but did not identify any evidence
19 contradicting Plaintiff's testimony. *See* Tr. 20-22. The Commissioner argues "mostly
20 normal mental status exam findings" supported the ALJ's decision. Dkt. 20 at 7. Mental
21 status examinations consistently showed some abnormal findings, such as "anxious and
22 depressed" affect and "irritated" mood, along with some normal findings. *See, e.g.*, Tr.
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1 398, 413. The ALJ failed to explain how this mixture of abnormal and normal findings
2 contradicted Plaintiff's testimony. The Commissioner cites findings such as cooperative
3 attitude and normal speech, but fails to explain how any of these findings contradict
4 Plaintiff's testimony that, for example, he cannot leave the house unless accompanied by
5 his wife or son. Dkt. 20 at 11; Tr. 41-42.

6 Conflict with the medical record was not a clear and convincing reason, supported
7 by substantial evidence, to discount Plaintiff's testimony.

8 The Court concludes the ALJ erred by discounting Plaintiff's testimony.

9 **B. Medical Opinions**

10 Because Plaintiff filed his claim after March 27, 2017, new regulations apply to
11 the ALJ's evaluation of medical opinion evidence. The ALJ must articulate and explain
12 the persuasiveness of an opinion based on "supportability" and "consistency," the two
13 most important factors in the evaluation. 20 C.F.R. § 404.1520c(a), (b). The "more
14 relevant the objective medical evidence and supporting explanations presented" and the
15 "more consistent" with evidence from other sources, the more persuasive a medical
16 opinion. *Id.* at (c)(1)-(2). At the least, this appears to necessitate that an ALJ specifically
17 account for the legitimate factors of supportability and consistency in addressing the
18 persuasiveness of a medical opinion. The Court must, moreover, continue to consider
19 whether the ALJ's analysis has the support of substantial evidence. *See* 42 U.S.C. §
20 405(g) ("findings of the Commissioner of Social Security as to any fact, if supported by
21 substantial evidence, shall be conclusive").
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1 **1. Ryan O'Connor, M.D.**

2 Dr. O'Connor examined Plaintiff in February 2018 and diagnosed PTSD, major
3 depressive disorder, and alcohol use disorder in remission. Tr. 308. Dr. O'Connor
4 opined it was "unlikely" Plaintiff could perform consistently without additional
5 instructions, work at a sufficient pace, or maintain attendance. Tr. 309. The ALJ found
6 these portions of Dr. O'Connor's opinion "not persuasive" because they were
7 inconsistent with the record, based primarily on Plaintiff's reports, and inconsistent with
8 Dr. O'Connor's own findings. Tr. 23.

9 The ALJ's finding that Dr. O'Connor's opinions were inconsistent with the record,
10 specifically minimal treatment and largely normal mental status examination results, was
11 not supported by substantial evidence. As discussed above, the ALJ erred by finding
12 minimal treatment because he failed to address Plaintiff's proffered reasons. And the
13 ALJ failed to explain how the mixture of abnormal and normal findings in mental status
14 examinations conflicted with or undermined Dr. O'Connor's opinions.

15 An ALJ may reject a medical opinion based heavily on a claimant's properly
16 discounted self-reports. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Here,
17 however, the ALJ erred by discounting Plaintiff's self-reports. This was not, therefore, a
18 valid reason to discount Dr. O'Connor's opinions.

19 Incongruity between a treating physician's opinions and her own clinical findings
20 can be a valid reason for rejecting the opinions. *Tommasetti v. Astrue*, 533 F.3d 1035,
21 1041 (9th Cir. 2008). Here, however, the ALJ failed to show such incongruity. Dr.
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1 O'Connor's opinion Plaintiff was unlikely to perform consistently without additional
2 instructions was "based on [his] performance on the cognitive exam." Tr. 309. The
3 opined difficulty working at a sufficient pace was "based on [his] ability to perform
4 activities of daily living," and difficulty maintaining attendance was based on both the
5 cognitive exam and activities of daily living. Tr. 309. The ALJ found Dr. O'Connor's
6 opinions inconsistent with portions of the cognitive examination showing Plaintiff could
7 accurately follow a three-step command, recall three objects after a delay, and perform
8 simple calculations. Tr. 23; Tr. 307-08. However, these normal findings did not
9 contradict Dr. O'Connor's opinions. And the cognitive examination showed
10 abnormalities in immediate recall, concentration tasks, and abstract thinking. Tr. 308.
11 The ALJ did not explain why the abnormal findings were not more probative than the
12 normal ones. The ALJ also failed to address Plaintiff's activities of daily living, on
13 which Dr. O'Connor based his opinions in part. Incongruity with his own findings was
14 not a valid reason to discount Dr. O'Connor's opinions.
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16 The Court concludes the ALJ erred by discounting Dr. O'Connor's opinions.

17 **2. Zohra Lodin, M.D.**

18 In February 2019, Dr. Lodin opined Plaintiff's chronic PTSD symptoms interfered
19 with concentration, persistence, pace, and ability to maintain punctual attendance. Tr.
20 348-49.
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22 The ALJ found Dr. Lodin's opinions "not persuasive" because they were
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1 inconsistent with minimal treatment and “fairly benign” mental status examinations.² Tr.
2 23-24. As discussed above, the ALJ failed to address Plaintiff’s proffered reasons for
3 minimal treatment. And Dr. Lodin, as a treating medical professional, was in a better
4 position than the ALJ to interpret the mixture of abnormal and normal clinical findings in
5 the record. The ALJ provided no reason why the normal findings would be more
6 probative than the abnormal findings.

7 The ALJ erred by discounting Dr. Lodin’s opinions without a valid reason
8 supported by substantial evidence.
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10 **3. State Agency Doctors**

11 The ALJ found two State agency non-examining psychologists’ opinions
12 “persuasive.” Tr. 23. Plaintiff contends this was error, because the opinions were not
13 supported by the record or consistent with the treating and examining doctors’ opinions.
14 Dkt. 19 at 3.

15 An ALJ may always accept a medical opinion, and need not even provide reasons
16 for doing so. *See Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ must provide
17 reasons for rejecting a medical opinion, but not for accepting and interpreting one).
18 However, because the ALJ must reevaluate Dr. O’Connor’s and Dr. Lodin’s opinions on
19 remand, if the ALJ accepts them he will need to reevaluate the State agency doctors’
20 opinions to the extent they conflict.
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22 ² The ALJ also stated Dr. Lodin was incorrect about a diagnosis of PTSD, but the Commissioner does not
23 defend this reason, apparently conceding it is erroneous. The ALJ misread the record, which clearly
states a diagnosis of PTSD. *See* Tr. 337, 326 (“Assessment: ... PTSD.”). In any case, there is no dispute
Plaintiff suffers from PTSD, as the ALJ determined it was a severe impairment. Tr. 17.

1 **CONCLUSION**

2 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and
3 this case is **REMANDED** for further administrative proceedings under sentence four of
4 42 U.S.C. § 405(g). On remand, the ALJ should reevaluate Plaintiff's testimony and Dr.
5 O'Connor's and Dr. Lodin's opinions; reassess the RFC as appropriate; and proceed to
6 step five as necessary.
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8 DATED this 19th day of May, 2021.
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12 The Honorable Richard A. Jones
13 United States District Judge
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